IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/06/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE F.M. IBRAHIM KALLIFULLA

WRIT PETITION.NO.12669 OF 2000

1. Union of India,
rep,. by M/s. Finance Department
of Revenue,
Chief Vigilance Officer,
New Delhi.

2. The Commissioner of Customs,
Customs House,
Chennai 600 001.

3. The Enquiry Officer,
Central Vigilance Commissiion,
Ministry of Finance,
New Delhi. .. Petitioners

-Vs-

1. The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai.

2. K. Manappa,
66/2, □G□ Block,
Anna Nagar (East),
Chennai 600 102. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioners : Mr.J. Madanagopal Rao
SCGSC

For Respondent-2 : Mr.R. Kannan

:O R D E R

(The order of the Court was pronounced by P.K.Misra,J.)

This writ petition has been filed by Union of India and other subordinate officials challenging the order of the Central Administrative Tribunal made in O.A.No.37 of 1998, which had been filed by the present respondent No.2 against the order of punishment imposed by the departmental authorities.

2. The following charge memo dated 11.9.91 was issued to the respondent No.2 :-

 That the said Shri K. Manappa, Examiner, while working as D.I. Shed Examiner, inspected the consignment of old and used tyres packed in 5 containers and gave wrong reports on the Bills of Entry Nos.041832 dated 11.10.90 and 041833 dated 11.10.90 a factually incorrect examination report resulting in the loss of revenue to the Government apart from the unauthorised importation. The imported goods sought to be cleared were misdeclared as scrap rubber tyre for reclaimation.. Shri K.Manappa instead of inspecting all the tyres, chose to inspect only the tyres kept in the front portion of the containers and gave report as verified that the tyres are having one cut.

3. An explanation has been furnished by the respondent No.2. On consideration of the materials on record, the enquiry officer came to the following conclusion:-

 The article of charge is established only to the extent that the inspection was carried out in a perfunctory manner and facts coming to light in the course of the inspection were not highlighted in the inspection report endorsed on the Bill of Entry Shri K. mannapa and countersigned by Shri P. Shantaram. There has been no loss of revenue. .

4. Thereafter the disciplinary authority issued memorandum dated 25 .3.94 enclosing the report and indicating that appropriate action shall be taken after considering the report of the enquiry officer. An explanation has been furnished by the respondent No.2. Thereafter, after giving a personal hearing on 19.8.94, the disciplinary authority by order dated 24.1.97 differed from the report of the enquiry officer and came to the following conclusion :-

 . . . Such a motivated report has to be viewed with appropriate belief to hold that he has not maintained absolute integrity. When the financial stakes are so high,there cannot be any other conclusion.

As regards revenue loss, one cannot forget the fact that had the consignments been physically removed out of customs control, in view of the fact that mostly there were reusable tyres, it would enable the importers to ear undue benefit to the tune of about Rs.20,81,965/- apart from the banned items finding entry into the market and undue hardship to the genuine traders in the market.

5. On the basis of such conclusion, the following punishment was imposed :-

" . . . Now, therefore, the undersigned orders that the present pay of Rs.2,180/- p.m. of Shri K. Manappa is reduced by 2 stages to Rs.2,060/- in the time scale of pay of Rs.1,640/- -60-2600-EB-75-2900 for a period of two years from the date of issu this order. Further, it is ordered that during the period of punishment, the officer will not earn the increment of pay due in the normal course and on the expiry of the period of punishment the reduction will have the effect of postponing the future increments of pay."

6. The appeal filed by the respondent No.2 having been proved to be futile, the Original Application was filed challenging the order of punishment.

7. The Administrative Tribunal came to the conclusion that since the disciplinary authority differed from the findings of the enquiry officer, he ought to have issued notice to the delinquent official indicating his mind that he is likely to differ from the report of the enquiry officer. For the aforesaid conclusion, the Tribunal placed reliance upon the decision of the Supreme Court reported in 1998 SCC L & S 1783 (PUNJAB NATIONAL BANK AND OTHERS v. KUNJ BEHARI MISRA). On the basis of the aforesaid decision, the Administrative Tribunal quashed the order of punishment leaving it open to the present petitioners to pursue the matter further.

8. Learned counsel appearing for the petitioners has submitted that since a notice had been issued to the respondent No.2 and an opportunity had been given, it cannot be said that principles of natural justice had been violated and in such view of the matter, the order passed by the Tribunal cannot be sustained.

9. There is no doubt that the punishment imposed by the disciplinary authority was a major punishment as contemplated in CCA Rule 14(V). The procedure contemplated for imposition of such penalty is enumerated in Rules 14 and 15. Even though the disciplinary authority had given an opportunity, at that stage it has not been indicated that the disciplinary authority was prima facie inclined to take a different view regarding the conclusion in the enquiry report. The rules enumerated in Rules 14 and 15 under CCA are almost pari materia to rules which were under consideration in the decision of the Supreme Court reported in 1998 SCC L & S 1783 (cited supra). Since a major punishment was being imposed, direct observance of the procedure as explained by the Supreme Court in the aforesaid case should have been made.

10. In the notice, which has been issued to the respondent No.2, it had not been indicated that the disciplinary authority was prima facie inclined to take a different view of the matter. Therefore, the order passed by the Administrative Tribunal cannot be faulted.

11. However, it has to be remembered that even the enquiry officer had come to a conclusion that inspection has been carried out in a perfunctory manner even though there had been no loss of revenue. In other words, the delinquent had not been completely exonerated by the enquiry officer. Even on the basis of such report, without differing from such finding, the punishment could have been imposed. However, on the basis of such culpability the imposition of a major penalty as had been done would be grossly disproportionate to the nature of culpability.

12. The incident had occurred in the year 1991. In view of such a long lapse of time, it would not be in the interest of justice to reopen the case for a further formal enquiry. On the other hand in view of the conclusion of the enquiry officer the delinquent cannot be allowed to go scot free.

13. In course of hearing of the matter, we had suggested to the counsel appearing for the respondent No.2 that even though major penalty should not have been imposed, a minor penalty should be imposed so that the matter can be concluded obviating the necessity of a further enquiry which may result in further harassment or inconvenience. Learned counsel for respondent No.2 did not have serious objection to such suggestion, but it was submitted by him that if some minor penalty is imposed it must be made clear that such minor penalty should not stand in the way of promotion.

14. In the peculiar facts and circumstances, interest of justice would be served by modifying the order of the Tribunal and directing that there shall be punishment of stoppage of one increment without cumulative effect and such punishment should not be considered as a bar for considering the question of promotion of the respondent No.2.

15. Accordingly, the writ petition is allowed in part and the order passed by the Administrative Tribunal as well as the disciplinary authority is modified to the extent indicated. There would be no order as to costs.

Index : Yes
Internet : Yes
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To

1. The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai.

2. K. Manappa,
66/2, □G□ Block,
Anna Nagar (East),□